

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|------------------------------------|---|-------------------------------------|
| In re FIRSTENERGY CORP. SECURITIES |) | No. 2:20-cv-03785-ALM-KAJ |
| LITIGATION |) | |
| _____ |) | <u>CLASS ACTION</u> |
| |) | |
| This Document Relates To: |) | Judge Algenon L. Marbley |
| |) | Magistrate Judge Kimberly A. Jolson |
| ALL ACTIONS. |) | |
| _____ |) | |

JOINT DISCOVERY STATUS REPORT

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Pursuant to the Court's August 19, 2022 Opinion and Order (ECF 333), the parties provide the following discovery status report regarding the discovery dispute between non-party Industrial Energy Users-Ohio and defendant Charles E. Jones. This dispute was recently reported to the Court on January 30, 2023 in response to the Court's Order dated August 19, 2022 (ECF 406).

Mr. Jones's Report

On January 30, 2023, Mr. Jones and third party Industrial Energy Users-Ohio ("IEU-Ohio") filed a joint status report regarding Mr. Jones's subpoena directed to IEU-Ohio. (*See* Doc # 406.) As the Court is aware, Jones is seeking documents from IEU-Ohio pursuant to a document subpoena dated May 9, 2022 ("Subpoena").

Since the January 30, 2023 Joint Status Report, and consistent with the Court's December 19, 2022 Order (Doc # 393), on February 7, 2023, Jones received from IEU-Ohio a supplemental hit report and on February 10, 2023 Counsel for Jones and Counsel for IEU-Ohio met and conferred regarding the hit report. IEU-Ohio has represented that the hit report covers the remaining data in IEU-Ohio's possession, which contains materials that are duplicative to what IEU-Ohio already has or will receive from IEU-Ohio's former counsel McNees Wallace & Nurick LLC ("the McNees Law Firm").

Other than these materials, Jones is still awaiting production of:

- The non-email electronic documents and email communications identified in the January 11, 2023 hit report, scheduled for production by February 25, 2023.
- All of the .pst files and responsive emails, which are still currently in the possession of the McNees Law Firm and scheduled for: transfer from the McNees Law firm to IEU-Ohio by February 24, 2023; and production to Jones by March 3, 2023 per the Court's January 31, 2023 Order. *See* Doc # 408. At this time, Counsel have scheduled a meet and confer on February 28, 2023, to discuss the status of the review and production of these materials.

The parties are in the process of scheduling a time for Jones to review the hard copy documents transferred by the McNees Law Firm to IEU-Ohio's current counsel.

IEU-Ohio's Report

On February 6, 2023 counsel for IEU-Ohio contacted the McNees Law Firm asking it to provide specific information about the approximate volume of megabytes, number of documents, and number of pages that it expects to provide to IEU-Ohio by the above-referenced February 24, 2023 deadline. That day, McNees responded that it was processing the electronic information for production to IEU-Ohio and upon completion it would have an estimated volume to provide. As of the time of filing this report, McNees has still not provided any estimated volume to IEU-Ohio and IEU-Ohio is concerned that the amount of data it will receive from McNees on or before February 24, 2023 will be far too voluminous to prepare for production by March 3, 2023.

This is the reason that counsel have scheduled the meet and confer on February 28, 2023. By that day, assuming that McNees provides all remaining electronically stored information by its February 24, 2023 deadline, IEU-Ohio would better be able to predict the amount of time reviewing the data for production will take. If the data is in fact voluminous, IEU-Ohio will likely move the court for additional time for production of that data.

Additionally, on February 8, 2023 IEU-Ohio received a subpoena from Plaintiff Los Angeles County Employees Retirement Association, with accompanying communication requesting that IEU-Ohio respond to a June 29, 2022 subpoena that had been the subject of prior meet and confer sessions with Plaintiff's counsel and for which discussion had previously appeared abandoned by Plaintiff. These subpoenas request provision of the documents that IEU-Ohio has and will be producing to counsel for Jones, and contain several other requests. IEU-Ohio anticipates that the meet and confer process and eventual provision of documents relating to the subpoenas it received from Plaintiff will also be time consuming.

While Plaintiff indicates that the second subpoena is "slightly extending the responsive time period," IEU-Ohio's position is that responding to either subpoena as written would take an

exceptional amount of time, and would perhaps be impossible. The fact that IEU-Ohio now has to also engage in a meet and confer process with Plaintiff imposes far more than a slight time commitment or burden on behalf of IEU-Ohio.

Class Plaintiffs' Report

Due to overlapping topics, IEU-Ohio has tentatively agreed to produce documents in response to Class Plaintiffs' June 27, 2022 subpoena to IEU-Ohio simultaneously with its production in response to Jones' subpoena to IEU-Ohio. Class Plaintiffs have recently issued a second subpoena to IEU-Ohio slightly extending the responsive time period and adding a few targeted requests. Class Plaintiffs and IEU-Ohio are currently discussing how to most efficiently identify and produce documents in response to this recent subpoena.

Dated: February 17, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically on February 17, 2023. Notice of this filing will be sent to all electronically registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Joseph F. Murray

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